

1 James T. Walker
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6
7 Plaintiff,
8 JAMES T. WALKER
9 in *pro per*

FILED
DEC 28 2007
RICHARD W. WILSON
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 JAMES T. WALKER,

CASE NUMBER: C07-3100 BZ

13 Plaintiffs,

FIRST AMENDED COMPLAINT FOR
DAMAGES

14 vs.

JURY TRIAL DEMANDED

15 C & H SUGAR, MARINE TERMINALS
16 CORPORATION, and DOES ONE TO FIFTY,
17 inclusive,

18 Defendants.



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JURISDICTION

1. This action arises under the rules of admiralty and maritime law, (the Jones Act claims, 46 U.S.C., and general maritime laws, 46 U.S.C. § 688 (Jones Act), recently re-codified at 46 USC, 30106, 28 U.S.C. § 1333 (federal question), and 28 U.S.C. § 1367 (supplemental jurisdiction). The unlawful acts and practices alleged herein occurred in the County of Contra Costa, California, which is within this judicial district. This Court also has jurisdiction over pendant state law claims for third party liability as well as over direct action against third parties for negligence under general maritime law; *Unsmer v. Luckenbach Overseas Corporation*. .

PARTIES

2. Plaintiff JAMES T. WALKER ("Walker" or "Plaintiff") is a competent adult, a resident of the County of Solano, California, and is, and was, a longshoreman employed by Pacific Maritime

1 Association.

2 3. Defendant C and H Sugar ("C & H") is a corporation engaged in the refinement and sales of
3 sugar. C & H also unloads raw sugar from ships at their California location in Crocket , Ca.

4 4. At all times mentioned herein, Defendant, Marine Terminals Corporation ("MTC")
5 maintained a crew (employees) who was in the business of unloading raw sugar for C & H at C &
6 H's location in Crocket, CA.

7 5. Plaintiff are ignorant of the true named and capacities of Defendants DOES 1 through 50,
8 inclusive, and therefore sues these defendants by such fictitious names. Plaintiff are informed and
9 believe and thereon allege that each Defendant so named is responsible in some manner for the
10 injuries and damages sustained by Plaintiff as set forth herein. Plaintiff will amend their complaint
11 to state the names and capacities of defendants named as DOE, when their true identities have been
12 ascertained.

13 6. In engaging in the conduct described herein, Defendants, and each of them, engaged in acts
14 covered by the laws of admiralty and maritime law.

15 7. Plaintiff will amend his Complaint to include State causes of action related to their Federal
16 claims within the relevant statutory tort claims filing time constraints.

17 **STATEMENT OF FACTS**

18 8 On or about May 1, 2002, Plaintiff, while operating in the corse and scope of his employment
19 with Pacific Maritime Association, was employed at the C & H plant in Crocket, CA. On that date,
20 Defendant C & H Sugar was engaged in unloading a ship containing raw sugar which sugar was to
21 be refined at its location in Crocket, CA. Also, on that date, Defendant Marine Terminals
22 Corporation operated C & H equipment in the unloading of raw sugar.

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24 9. On or about May 1, 2002, while Plaintiff was acting as an assigned shoveler, scraping raw
25 sugar off the hull of the ship. While Plaintiff worked, an employee of Marine Terminal Corporation
26 operated a backhoe machine owned by C & H Sugar on C & H Sugar's plant property. On May 1,
27 2002 the operator of the backhoe lost control of the backhoe negligently causing Plaintiff to be
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1 struck in the head with a heavy piece of metal. The operator of the backhoe immediately following
2 the incident, stated to Plaintiff, "the backhoe malfunctioned."

3 10. At all relevant times herein mentioned, Defendant C & H Sugar had a duty to maintain its
4 equipment in a workman like manner in order to avoid causing personal injury to persons within the
5 zone of danger created by the work site.

6 11. At all relevant times herein mentioned, Defendant MTC had a duty to properly train and
7 supervise its employees in order to avoid injury to third parties performing work at the C & H Sugar
8 location.

9 12. At all relevant times herein mentioned, the operator of the backhoe had a duty to operate the
10 backhoe in such a way as to avoid causing personal injury to third parties working at the C & H
11 Sugar site.

12 13. Due to Plaintiff's brain injury, Plaintiff suffered the loss of legal competency which loss of
13 competency tolled the applicable statute of limitations.

14 14. Plaintiff found it necessary to engage the services of private counsel to vindicate his rights.
15 Plaintiff is therefore entitled to recover all attorneys' fees incurred in relation to this action pursuant
16 to the laws of admiralty and maritime.

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19 **FIRST CAUSE OF ACTION**

20 **(Negligence - Marine Terminal Corporation)**

21 15. Plaintiff hereby re-allege and incorporate by reference herein paragraphs 1 through 14 of this
22 Complaint.

23 16. Defendant, ("MTC") maintained a crew (employees) who was in the business of unloading
24 raw sugar for C & H at C & H's location in Crocket, CA. While unloading sugar on the Crocket site,
25 MTC and its crew members, owed a duty of due care to avoid injury to those persons within its area
26 of operation. MTC and its crew member breached its duty of due care by failing to properly control
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1 a backhoe, which breach of duty actually and proximately caused injury and damages to Plaintiff by
2 causing Plaintiff to be struck in the head and to suffer medical special damages, brain damage, loss
3 of employment, loss of employability, modification of living standard and other such damages
4 including maintenance and cure. Plaintiff also seeks prejudgment interest.

5 WHEREFORE, Plaintiff(s) pray for relief as hereinafter set forth.

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7 **SECOND CAUSE OF ACTION**

8 **(Negligence - C & H Sugar)**

9 17. Plaintiff(s) hereby re-allege and incorporate by reference herein paragraphs 1 through 15 of
10 this Complaint.

11 18. At all relevant times herein mentioned, Defendant C & H Sugar had a duty to maintain its
12 equipment in a workman like manner in order to avoid causing personal injury to persons within the
13 zone of danger created by the work site. Defendant breached its duty of due care by failing to
14 maintain its equipment in proper working order. The breach of duty, as above, actually and
15 proximately caused injury and damages to Plaintiff.

16 19. Defendant's breach of duty actually and proximately caused injury and damages to Plaintiff
17 by causing Plaintiff to be struck in the head and to suffer medical special damages, brain damage,
18 loss of employment, loss of employability, modification of living standard and other such damages
19 including maintenance and cure as well as prejudgment interest.

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21 WHEREFORE, Plaintiff(s) pray for relief as hereinafter set forth.

22 **THIRD CAUSE OF ACTION**

23 **(Negligence - C & H Sugar)**

24 20. Plaintiff hereby re-allege and incorporate by reference herein paragraphs 1 through 18 of this
25 Complaint.

26 21. Defendant, C & H Sugar, at all relevant times herein mentioned owed Plaintiff a worker on
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1 Defendant's premises, a duty of due care to supervise the work site in such a way as to avoid causing
2 injury and damages to persons engaged in work on said site. Defendant breached its duty of due care
3 by failing to supervise operations which supervision would have avoided injury to Plaintiff.
4 Defendant's breach of duty, as above, actually and proximately caused injury and damages to
5 Plaintiff.

6 WHEREFORE, Plaintiff(s) pray for relief as hereinafter set forth.

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8 **FOURTH CAUSE OF ACTION**

9 **(Negligence Causal of Emotional Distress - all Defendants)**

10 21. Plaintiff(s) hereby re-allege and incorporate by reference herein paragraph 1 through 21 of
11 this Complaint.

12 22. Defendants and each of them owed Plaintiff a duty of due care. Defendants, and each of
13 them, breached their respective and independent duties of due care. Their breaches actually and
14 proximately caused Plaintiff to suffer emotional distress.

15 WHEREFORE, Plaintiff(s) pray for relief as hereinafter set forth.

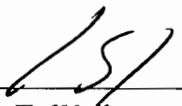
16 Plaintiff(s) hereby demand a jury trial in this action.

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18 **PRAYER**

19 WHEREFORE, Plaintiff(s) pray for relief, as follows:

- 20 1. For general damages in a sum of \$10,000,000.00;
21 2. For Special Damages in a sum according to proof;
22 3. For punitive damages in a sum according to proof;
23 4. For reasonable attorney's fees;
24 5. For cost of suit herein incurred;
25 6. For such other and further relief as the Court deems just and proper.
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1 Dated: _____

2 By 
3 James T. Walker
4 Plaintiff in pro per

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